S.B.Civil Writ Petition No.779/06

Dated:- 22.10.2007.

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.Dinesh Mehta, for the petitioner.
Mr.S.K.M.Vyas, for the respondents.

This writ petition is directed against the order dated 11.11.2005 passed by the District Judge, Pali in Civil Appeal Order No.26/2005, whereby the appeal preferred by the petitioner against order dated 9.8.2005 passed by the Civil Judge(J.D.), Marwar Junction, rejecting the application preferred by the petitioner seeking temporary injunction under Order 39 Rule 1 & 2 read with Section 151 of C.P.C., has been dismissed.

The matter comes up for admission, however, with the consent of the parties, the same is heard and disposed of finally at this stage.

On 21.2.2006 the notices were issued by this Court to the respondents to the limited extent as to why the observations made by the Appellate Court in para 10 of the impugned judgment in relation to operation and effect of provision of Section 109 of the Rajasthan Panchayati Raj Act, 1994 (in short "the Act of 1994" hereinafter) be not set aside.

It is submitted by the learned counsel for the petitioner that although the relief sought by way of temporary injunction has been refused to the petitioner essentially for the reason that

the learned trial Court came to the conclusion that the possession of petitioner had already been removed and, therefore, the petitioner was not entitled for grant of any temporary injunction, however, the learned Appellate Court while affirming the said order of the trial Court has proceeded even to make observations about the competence of the suit with reference to provisions of Section 109 of the Act of 1994. The learned counsel contended that the learned trial Court has committed a grave error of law in observing that the petitioner's suit itself was not maintainable in view of the provisions contained in Section 109 (1) (b) of the Act of 1994. The learned counsel has drawn attention of this Court to the observations made by the Appellate Court in para no. 10 of impugned order to the effect that the petitioner's suit had earlier been dismissed / withdrawn for want of prior notice required u/s 109 of the Act of 1994, no fresh suit was maintainable particularly, after expiry of six months from the date when first cause of action arose.

In my considered opinion, all these questions regarding maintainability of the suit are required to be decided by the learned trial Court after determination of the issues involved on the basis of the pleading of the parties. The learned Appellate Court had no occasion to record categorical finding holding that the subsequent suit preferred by the petitioner is not maintainable. It is true that such observations has been made only in relation to the appeal arising out of the order refusing the

temporary injunction but, such observation made by the Appellate Court may operate in prejudice to the petitioner. Therefore, such observations made needs to be set aside while maintaining the order dated 11.11.2005 passed by the learned Appellate Court rejecting the appeal preferred by the petitioner against the order of temporary injunction passed by the learned trial Court.

The learned counsel appearing on behalf of the respondents in all fairness has not opposed the limited prayer made by the petitioner as aforesaid.

Accordingly, this writ petition is disposed of with the directions that the observations made by the Appellate Court in para no.10 of the impugned judgment regarding the maintainability of the suit shall not be of any effect whatsoever in the trial of the suit and in determination of the real issues involved in the matter. No order as to costs.

(SANGEET LODHA),J.